

DOCKET FILE
ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL SECTION

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FCC 93M-446

DISPATCHED BY

In re Application of)	MM DOCKET NO. 93-176
)	
RICHARD RICHARDS)	File No. BRTTL-921116IG
)	
For Renewal of License of)	
Low Power Television)	
Station K33CG,)	
Sierra Vista, Arizona)	

PREHEARING AND TRIAL ORDER

Issued: July 07, 1993 ; Released: July 08, 1993

In order to be heard in this license renewal proceeding, Richard Richards, the licensee, must file in triplicate with the Commission Secretary by July 19, 1993, a written Notice of Appearance [47 C.F.R. §1.221]. See Hearing Designation Order FCC 93-305, released June 28, 1993 at Para. 6. The first Prehearing Conference has been set for September 8, 1993, at 9 a.m. in Washington, D.C. (FCC 93M-430).

The burden of proceeding and the burden of proof have been assigned by the Commission to the licensee. Hearing Designation Order FCC 93-305, supra, at Para. 5. Discovery may commence immediately. The Bureau may seek to discover through interrogatories any evidence in mitigation¹ on which the licensee may seek to rely. Since the Hearing Designation Order is specific about the convictions for the possession of marijuana with intent to distribute and the cultivating of marijuana on federal property on which the renewal proceeding is based, relevant documents can be identified through requests for admission. The scope of any other discovery that is believed to be needed shall be discussed and ruled on at the Conference.²

¹ United Broadcasting Co., 86 F.C.C. 2d 452, 456 (renewal applicant may introduce "mitigating" evidence).

² The parties may apply to the Presiding Judge for leave to take discovery by deposition or to otherwise obtain necessary discovery if there is any opposition offered to voluntary discovery. It is noted that non-party discovery will require a subpoena unless it is voluntary. See 47 C.F.R. §1.331 et seq.

The parties SHALL CONFER by July 30, 1993,³ on the scope of their respective discovery; whether facts can be established by stipulation or official notice; and what depositions, if any, are needed. The licensee shall also disclose to Bureau counsel, in writing, a summary of his anticipated mitigation evidence, including expected testimony that he intends to offer. Facts offered in mitigation generally will need to be corroborated by reliable documents if such facts are to be given significant weight by the Presiding Judge. The parties shall also seek to agree to offer direct testimony in written statements to be exchanged before the hearing, or agree on an alternate procedure. 47 C.F.R. §1.248(d)(3).

The parties SHALL FILE AND SUBMIT by August 6, 1993, a Status Report which sets forth the subjects on which the parties have been ordered to confer.⁴ If further discovery is contemplated, the party seeking discovery SHALL SPECIFY the subject matter(s) and the method(s) of discovery contemplated in addition to estimating how long it is expected to complete such discovery. If the parties intend to offer testimony on direct other than through sworn exchanged testimony, the Report must set forth the alternate proposed procedure. The parties shall include in the Report an estimate of the time needed to complete the discovery and to try this case.

There has been a hearing date set for October 13, 1993 (FCC 93M-430). The first day of hearing shall commence at 10 a.m. Thereafter, the hearings shall commence at such earlier times as will be set by the Presiding Judge. The following procedural schedule IS ESTABLISHED:

³ Such conferring may be by telephone. The use of faxed documents is authorized between the parties in connection with their initial meeting(s) in order to facilitate matters. However, unless ordered otherwise, the parties must appear in person or through counsel at the Prehearing Conference set for September 08, 1993.

⁴ A copy of this Status Report must be hand-delivered to the office of the Presiding Judge, Suite 212, 2000 L Street, N.W. Washington, D.C. 20036, by 3:00 p.m. on September 2, 1993.

September 17, 1993	Completion of discovery.
September 27, 1993	Exchange written direct cases to include sworn, signed written testimony and document exhibits. ⁵
September 29, 1993	Serve notifications of witnesses for cross examination. (Service may be by fax or telephone followed by writing mailed the same day.)
October 4, 1993	Objections to witness notifications. Copy must be hand-delivered to the office of the Presiding Judge by 3:00 p.m.)
October 13, 1993	Hearing set for 10:00 a.m. in a Commission courtroom in Washington, D.C.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

⁵ The exhibits must be serially numbered, separately paginated, and assembled in a binder with a tab preceding each document. A prefix will be used to identify the party sponsoring the exhibit. Each exhibit (or series of exhibits of a common sponsor) must be accompanied by the affidavit or the declaration under penalty of perjury of the sponsoring witness. If official notice is to be requested of materials in the Commission's files, the materials shall be assembled, tabbed, identified by source, assigned an exhibit number, and exchanged on the exchange date set for September 27, 1993.